THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 3 NOVEMBER - DECEMBER, 1952 Number 2

". . . And From Zion Shall Go Forth The Law . . ." — (ISAIAH II: III)

THE DECALOGUE JOURNAL

Published Bi-Monthly by

THE DECALOGUE SOCIETY OF LAWYERS

180 W. Washington St. Chicago 2, Illinois

Telephone ANdover 3-6493

Volume 3 NOVEMBER - DECEMBER, 1952 NUMBER 2

BENJAMIN WEINTROUB, Editor

IN THIS ISSUE

Chaim Weizmann—In Memoriam

By BENJAMIN WEINTROUB

Chaim Weizmann is no more and, together with the Jewry in all lands we mourn his passing. To him was granted that which few men of this or any other age ever received: the realization in one's lifetime of a fondest dream.

He was nearly 78 years when he died. Born near Pinsk, Russia, one of fifteen children of orthodox parents, he left his native land when eighteen years of age. He studied and worked in Germany and in Switzerland. In 1910 he became a naturalized citizen of England. There he taught chemistry at the university of Manchester. A brilliant scientist, thanks to the startling discoveries made by him during World War I, he indebted to himself the British government. He made it possible for the sorely pressed British Empire to manufacture deadliest explosives in its life and death struggle with the German war machine. He asked as his reward of triumphant England its consent for the establishment of a Jewish National Home. The Balfour Declaration issued in 1917 is as much a personal compliment to Weizmann as it was a long past due acknowledgement of the just claims of the Jewish people.

Volumes have been written and more doubtless are to come that will record, further, the first President's of Israel enormous contributions to the welfare of Jewry. He was courageous, resourceful, and steadfast to his determination to accord stricken Jewry a permanent shelter, a home. What had seemed nebulous became concrete reality because Weizmann's intelligence, perseverance, and diplomacy so willed it. He believed passionately in the destiny of the Jewish people and he brooked no opposition, no compromises such as the substitution of a Uganda, Kenya or a homeland in Australia, instead of Palestine, as settlements for the Jew. Bloody pogroms in Russia or the horror that was Hitler were but nightmares to survive in quest of the Weizmann dream. He had achieved it. The indebtedness of the Jewish people to this great statesman is incalculably large.

Herzl pointed the way; Weizmann marched to the goal. From the Diaspora into Israel. A tremendous deal is yet to be done to strengthen and to fulfill Weizmann's aspirations. He has, however, left a sturdy people hardened by privations, persecutions, and misery into an irresistible force that is not to be denied into the complete realization of Weizmann's legacy: an advanced and a modern Jewish state. The spirit of such a resolution is his precious heritage to his beloved fellow Jews.

Recent Illinois Supreme and Appellate Court Decisions

By HARRY G. FINS

Necessary Parties in Administrative Review

The case of *Cuny* vs. *Annunzio,* 411 Ill. 613, should be watched very carefully whenever a review is taken under the Unemployment Compensation Act. In that case an administrative review was taken from the order of the administrative agency and the Director of Labor was made a party defendant, but the Board of Review was not made a party defendant. The Supreme Court held that both the Director of Labor and the Board of Review should have been made parties defendant, although both of them are an arm of the Department of Labor, and in view of the appellants failure to do so, the appeal was dismissed.

Change of Venue from Administrative Agency

Smith vs. *Department of Registration and Education,* 106 N. E. (2d) 722 412 Ill.—is also one of first impression in Illinois. In that case the Supreme Court held for the first time that a person is entitled to a change of venue in a hearing before an administrative agency. Smith was a physician who had been treating cancer through the "Koch Treatment." There seems to be a difference of opinion in medical circles as to whether the "Koch Treatment" will or will not prevent cancerous development or growth. The American Medical Association has taken the view that anyone using the "Koch Treatment" is merely a charlatan, obtaining money under false pretenses. The American Medical Association has tried to persecute every physician who has used the "Koch Treatment." Despite this there is apparently a small group of physicians who insist that the "Koch Treatment" has cured their patients wh were suffering of cancer in the early stages. The Illinois Department of Registration and Education filed a complaint against Smith. Smith filed a petition for change of venue in which he alleged that the doctors constituting the committee before which the hearing was to be held were all members of the American Medical Association and were committed to the proposition that the "Koch Treatment" was not helpful and that they were prejudiced against him and would not give him a fair hearing. After the petition for change of venue was denied, the doctor and his lawyer left the hearing room and refused to participate in the hearings. Ex parte hearings were held, wherein an order was entered by the Department of Registration and Education depriving Dr. Smith of his license to practice medicine in Illinois. The proceedings were then reviewed by the Superior Court of Cook County, at which time Smith offered to prove that previous patients of his and of other doctors who used the "Koch Treatment" were cured. In view of the fact that the Superior Court in reviewing an order of an administrative agency cannot hear any evidence, the offer of proof was denied and the order of the director of the Department of Registration and Education was sustained. The Supreme Court reversed the case on two grounds: (1) Since another committee of doctors who were not members of the American Medical Association and who were not definitely committed against the "Koch Treatment" was available, Smith had a right to a change of venue so that he may have a fair trial. (2) The Supreme Court said that there was nothing in the record to show whether the "Koch Treatment" was either good or bad and that it had no prophetic vision nor sufficient medical knowledge to determine for itself and that there was nothing in the record by way of evidence from which it could determine the real issue in the case.

Blood Transfusion to Child of Jehovahs Witness

The case of *People ex rel Wallace* vs. *Labrenz,* 411 Ill. 618, is yet another case of first impression in Illinois. A child was born to parents who were Jehovah Witnesses. The child had a RH blood condition, a disease in which the red blood cells are destroyed by poison in the body. The normal cure for such condition is to perform a blood transfusion whereby the child's blood is pumped out and healthy blood

is pumped in. However, Jehovah Witnesses consider that type of transfusion as the destruction of a soul, equivalent to murder. The parents therefore refused to have a blood transfusion performed. A petition was then filed in the family court (commonly known as juvenile court), alleging that the child had become dependent and asking that the child be taken from its parents and placed under the guardianship of a suitable person to be appointed by the court. This was done and the transfusion performed. The parents prosecuted a writ of error to the Supreme Court, which held that this procedure was proper and in support of its decision cited Prince vs. Massachusetts, 321 U. S. 158, wherein the Supreme Court of the United States said:

> The right to practice religion freely does not include liberty to expose the community or child to communicable disease or the latter to ill health or death. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

The Supreme Court pointed out that since the transfusion had already been performed the question to be decided was really moot, but despite that state of the record it felt that the issue was of such importance that the Supreme Court should pass on it.

Purgation by Oath Abolished

The case of *People* vs. *Golson*, 412 Ill. 294, is another one of first impression in Illinois. From 1818, when Illinois became a State, until May 1952, Illinois followed the doctrine of "purgation by oath" in criminal contempt cases. That is, if an indirect criminal contempt is committed outside of the presence of the court, and accused denies the charge under oath, he is automatically purged and entitled to be discharged. If the sworn answer is false, the only remedy available used to be an indictment by a Grand Jury for perjury. This doctrine was known as purgation by oath, because the person was purged by the mere oath. This peculiar doctrine had its origin in the earliest centuries of the common law and was adopted by a number of the States as a part of the common law. Illinois had consistently followed this doctrine, beginning with the case of Crook vs. People, 16 Ill. 534 (1854) to and including People vs. Hagopian, 408 Ill. 618 (1951). In People vs. Golson the Supreme Court of Illinois reviewed the origin of the doctrine and, following the lead of the Supreme Court of the United States, scuttled it completely. In doing so, the Supreme Court made the following direct and unequivocal statement:

> We are fully aware of the numerous decisions of this court beginning with Crook vs. People, 16 Ill. 534, and continuing to People vs. Hagopian, 408 Ill. 618, wherein the rule is consistently stated and applied. An examination of all these cases discloses that in every one the rule was stated and applied but in not one instance was any attempt made to justify or explain it.
>
> "The doctrine of purgation by oath" will no longer be adhered to by this court, and all previous decisions of this court upholding and applying that doctrine, in that respect, are hereby expressly overruled.

Writ of Error Coram Nobis to Set Aside Default Judgment

The case of *Ellman* vs. *DeRuiter*, 412 Ill. 285, is one of great importance to every practicing lawyer. Prior to 1952, the law of Illinois was in a somewhat uncertain state, but there were a good number of cases which held that in order to vacate a judgment by default in an action at law after the expiration of 30 days, even though the default judgment was the result of a mistake, it was necessary to file an original complaint in equity to set aside the judgment at law. This, of course, resulted in a circuity of actions. Under some of the cases in Illinois a writ of error coram nobis was not available. In the Ellman case the Supreme Court of Illinois, following the lead of the Supreme Court of the United States and the spirit of the civil practice act, held that to vacate such a judgment it is no longer necessary to file a separate suit in equity and that the same result may be obtained by a motion in the nature of a writ of error coram nobis, under Section 72 of the Civil Practice Act, filed in the very case where the judgment was rendered. This should prove very helpful to practicing lawyers and will simplify the highly technical distinctions that existed prior to this decision.

Probation Waives Appeal

The case of *People* vs. *Collis*, 344 Ill. App. 539, has established the proposition that when an accused in a criminal case is found guilty and thereafter applies and is granted probation, he thereby waives his right to an appeal or

writ of error. This is the first case in Illinois which has adopted this principle, although the doctrine has been followed in a number of other States. Since then the case of People vs. Brown, 345 Ill. App. 610 has been decided, which followed the same doctrine, resulting in the dismissal of writs of error which were later prosecuted by the persons convicted. The Supreme Court of Illinois has not as yet passed on this point. However, a practicing lawyer must keep this in mind in representing a client, who for one reason or another is anxious not to have a conviction stand against him. By applying and obtaining probation the conviction can never be reversed by any other court. It should also be kept in mind that since this constitutes a waiver of appeal and writ of error under State procedure, it likewise constitutes such a waiver if a federal constitutional question were raised and that by doing so the accused forecloses himself from having the matter reviewed by the Supreme Court of the United States. See Central Union Co. vs. Edwardville 269 U. S. 19 and Parker vs. Illinois 333 U. S. 571.

Effect of Appeal from Interlocutory Order

The case of *Chicago Land Clearance Commission* vs. *White,* 411 Ill. 310, decided that where a motion to dismiss a pleading is overruled, which is an interlocutory order, and an appeal is nevertheless taken from such interlocutory order, the trial court may nevertheless disregard the notice of appeal and proceed with an adjudication of the remaining issues during the pendency of such unauthorized appeal.

Section 29 of Workmen's Compensation Act Unconstitutional

In *Grasse* vs. *Dealers Transport Co.,* 412 Ill. 179, the Supreme Court of Illinois held unconstitutional section 29 of the Workmen's Compensation Act, which has been a part of the Act since 1917. This means that where an employee is injured by another employee, both being under the Workmen's Compensation Act, the injured employee may proceed with a common law action and is not to be limited by the amount specified in the Workmen's Compensation Act, as provided in Section 29 of said Act. This, of course, is of great importance to all personal injury lawyers and is likewise of great importance to employers.

1951 Amendment to Civil Practice Act Unconstitutional

The case of *Agran* vs. *Checker Taxi Company,* 412 Ill. 145, involved the constitutionality of the 1951 amendment to the Civil Practice Act.

During the 1951 legislative session the Civil Practice Act was amended so as to require a 5 day notice for certain motions. The civil practice committee of the Chicago Bar Association felt that the amendment was poorly drawn and with the cooperation of Judge Harry M. Fisher, who held the amendment unconstitutional, tested the matter in the Supreme Court. The Supreme Court sustained the decision of the lower court and held the amendment unconstitutional on the ground that it was a delegation of judicial power to the clerk of court, who is not a judicial officer.

DECALOGUE DIARY SOON READY

Oscar M. Nudelman, Chairman of The Decalogue Diary and Directory Committee announces that the Thirteenth annual issue of our Diary will soon be available to our members. Attractively bound and containing all of its former features which make this volume a most outstanding and useful aid to the busy lawyer, the Diary as usual, will be distributed free to members of our Society. For exact date of its availability please phone Chairman, Oscar M. Nudelman, FRanklin 2-1266 or The Decalogue Society office, ANdover 3-6493.

JUDGE EIGER INDUCTED

President Harry A. Iseberg represented The Decalogue Society of Lawyers with a felicitating address at the installation and induction ceremonies September 26 in honor of member Norman N. Eiger newly elected Judge of the Municipal Court.

RICHARD S. KAPLAN

Member Richard S. Kaplan of Gary, Indiana was elected President of post 17, American Legion, largest post in Lake County, Indiana. Kaplan is also Assistant Director of the Indiana Department of Veterans Affairs.

Toward Revision of the McCarran-Walter Act

By MAX SWIREN

Member Max Swiren represented most of the Jewish community, including The Decalogue Society of Lawyers, in a recent appearance before the President's Commission on Immigration and Naturalization. In words that created a profound impression upon all who heard them, he set forth the basic arguments against the McCarran-Walter Immigration Act and made suggestions for its revision. The article which is an abridged summation of Swiren's views, follows. —EDITOR

The McCarran-Walter Immigration Act presents the same situation as that which confronted the bride who married in haste. She repented bitterly in leisure. Almost everyone knew that the proposed act had many things wrong with it. Some of those who voted for it have since confessed their misgivings, but the act is on the books and it may be difficult to revise it as thoroughly as justice and common sense require. President-elect Eisenhower has said publicly and in a communication to The Decalogue Society that he favors our suggestions for revision. Perhaps he will have his way. It will be well, in any event, to confront him and our legislators again and again with the story as we see it. The Decalogue Society of Lawyers will surely work with other right-minded people in this effort, and I am glad to learn that our Civic Affairs Committee, under the chairmanship of Elmer Gertz, is charged with special responsibility in this matter.

The problems must be examined in the light of the monumental upheaval, social and political, that engulfs two-thirds or more of the globe. The world is witnessing a gigantic battle of ideas with consequences that touch the very existence of our civilization. We have the opportunity and, indeed the duty, to contribute strength, vision and courage in that struggle.

We must cast away false racist philosophies and have faith in our ideals. Immigrants should be received in a spirit of brotherhood that they may build lives of tranquility and service, that they may enrich our farms and our factories, our arts and our sciences, our religious and our political institutions.

Our national immigration policy must be predicated upon three fundamental principles:

First: Immigration is healthy for our culture and our economy. The introduction of new threads into our national fabric adds strength and resiliance.

Second: The admission of immigrants must reflect a wholesome spirit of international good will, understanding and cooperation consonant with our foreign policy.

Third: Immigrants admitted to our country must be permitted to rebuild their lives in an atmosphere of peace and tranquility made secure by democratic principles and processes.

What kind of legislative scheme can implement these fundamental principles? The answer lies along these lines:

1. Related to the need abroad and our tremendous absorptive capacity at home, these principles demand that the permissive total of immigrants be at least double the 154,000 provided in the McCarran Act. Indeed, it would not be unreasonable to set the outer limits at one-half of one percent of our population. The limitation should be flexible so that an unfilled quota of one year may be utilized in the following year, to the end that investigation under the security provisions of the Act involving delays of as much as six months may not defeat the immigration objectives.

2. The selection of immigrants should be entrusted to a special board charged with formulating and carrying out a national immigration policy resting upon the fundamental principles above outlined. The urgency of the situation rather than any artificial regard for national origin should be of primary concern. The board should have flexible power to set percentages, within statutory limits, in the following categories for which priority would be accorded in granting immigration visas:

(a) Immigrants seeking to join their families in this country. The principle of reuniting families must apply with equal force to both citizen and alien residents.

(b) Persons seeking asylum. Refugees from racial, religious or political persecution.

(c) Persons having special skills, training

and qualifications and, in this connection, there should be at least as much interest in university professors and scientists as in sheepherders.

(d) Finally, room should be reserved for new seed immigration. This does not involve relaxation of the stringent minimum qualifications for entry into the country.

3. Immigration proceedings should conform to the requirements of the Administrative Procedure Act. The denial of a visa by an American consul should, upon application of an American citizen concerned with the matter, be subject to review by a board of appeals, and thereafter subject to judicial review. In every area of the immigration service there should be an opportunity for fair hearing, uniformity of treatment, and the right of judicial review.

4. Deportation should be a matter of judicial rather than administrative jurisdiction. The McCarran Act departs from basic constitutional requirements of fair play in entrusting unlimited authority to the Attorney General.

In the realm of naturalization, as in immigration, we bespeak an attitude of understanding, encouragement and hospitality in contradistinction to the atmosphere of hostility in which the McCarran Act was conceived. We repudiate the McCarran concept of second-class citizenship for the naturalized immigrant. We insist that all citizens shall have the same burdens and responsibilities and enjoy the same rights and privileges. Naturalized citizens and native born citizens alike must enjoy the constitutional freedoms without fear that an unpopular expression may jeopardize precious citizenship. No more shameful challenge to that principle can be conceived than appears in the provisions of the McCarran Act for revocation of naturalization. Without limit of time, revocation is authorized by judicial proceeding upon a showing of either "willful misrepresentation" or "concealment of a material fact." Having in mind the atmosphere of hysteria that obtains in many quarters, it is easy to imagine that matters to which no one would have given a second thought ten years ago may now be regarded as a "material fact."

The Criminal Code provides substantial penalties for persons guilty of contempt of Congress for declining to testify. Where such refusal concerns subversive activities, the McCarran Act imposes an additional penalty upon the naturalized citizen by automatically depriving him of his citizenship and subjecting him to deportation if the act occurred within ten years of naturalization. In utter disregard of the seriousness of denaturalization and banishment, of the life and death character of the determination, the Act provides that membership in or affiliation with a subversive organization within five years after naturalization raises a *prima facie* presumption that the citizen was not well disposed to the good order and happiness of this country at the time of naturalization. A third area of discrimination against the naturalized citizen appears in the provisions for expatriation. This does not square with the spirit of the decisions of the Supreme Court.

In this great City, we appreciate the strength we derive from our melting-pot population. We have seen in our generation how the multitude of peoples gathered together from all parts of the globe can live and build together. We saw in World War I, in World War II, and in the Korean conflict now that when our country is attacked, all these people respond in one voice, and when the supreme sacrifice is made, it is without discrimination, without national origin quotas.

GREAT BOOKS COURSE

A new project of The Decalogue Society of Lawyers was inaugurated October 15 at the Society Headquarters, 180 West Washington Street, under the auspices of The Great Books Foundation and under the leadership of member Alec E. Weinrob. The group is scheduled to meet every other Wednesday from 6:15 to 8:15 P.M. Weinrob is assisted in the conduct of the course by attorney Sidney J. Be-Hannesey.

At the opening session the discussion concerned the Declaration of Independence and its significance to civilization in modern times. The Greek philosophers and playwrights of the Classical Age are next to be read and considered.

While the classes are open to all members and their families lawyers, non-members, may also attend. For further information please write to Society Headquarters, 180 West Washington Street or address Alec E. Weinrob, chairman of The Great Books Course, 134 North LaSalle Street, Chicago 2, Illinois.

Decalogue Society Sponsors Courses in Hebrew Law

One of the outstanding projects of The Decalogue Society of Lawyers is scheduled to begin early in January. President Harry A. Iseberg announced that in co-operation with The College of Jewish Studies a course of Eight lectures in Hebrew Law will be given by Rabbi Abraham E. Abramovitz, L. L. B., beginning Monday, January 8th at 4:15 P.M. and on dates listed below. The course will be given at the Society's headquarters, 180 West Washington Street. Registration is open to all members of The Decalogue Society of Lawyers. No fee for the course is required.

The following subjects will be taken up during the course in Hebrew Law.

The subjects will be treated in the light of Biblical, Talmudic, and Rabbinic interpretations.

(1) ORIGIN and SOURCES OF HEBREW LAW **January 8, 1953**

The Bible, the Talmud, the Codes. Development of the branches of Ecclesiastical and Secular Law. The spirit and the letter of the Law. Equity and Law.

(2) COURT STRUCTURE and PROCEDURE **January 29, 1953**

Civil, Criminal, Appellate & Legislative Courts. Composition and size of the various courts. Courts of Arbitration. Qualifications necessary for judgeship. Appointments and promotions. Court personnel. The law suit. Forms of pleading. Voting on the verdict. Formal court documents. Time and manner of holding court.

(3) EVIDENCE **February 19, 1953**

Administration of oaths. Evidence in civil and criminal cases. Depositions. Notices of compulsion to produce evidence. Who is qualified to testify? Examination of witnesses. Discrepancies and contradictions. Parole Evidence Rule. Impeachment of testimony.

(4) TORTS **March 5, 1953**

Principles of the laws of Damages. Contributory negligence. Invisible damage. Self defense. Nuisances. Deceit. Slander. Restitutions and Fines.

CRIMINAL LAW—What constitutes a crime? Premeditated and Unpremeditated crimes. Mode of punishment. Parties to a crime.

(5) AGENCY **March 19, 1953**

Gratuitous and paid agents. Estoppel and ratification. Liabilities and obligations of third parties. Assignees as agents.

CONTRACTS—The construction of contracts. Consideration. Interpretation of contracts. Parties qualified to enter into contract. Specific performances. Frauds and mistakes. Admissions. Quasi-contract. Labor Relations. Partnerships. Keepers. Bailers and Borrowers.

(6) TRANSFER OF REAL AND PERSONAL PROPERTY **April 2, 1953**

Titles to land or personal property. Deeds. Modes of acquisitions. Certification of instruments. Mortgages on real estate. Foreclosures. Loans on personal property. Endorsements. Division of property. Found property. Negotiable instruments.

(7) DOMESTIC RELATIONS **April 16, 1953**

Age of consent of marriage. Forbidden marriages. Marriage by Proxy. Marriage by force. Nuptial obligations. Grounds for divorce. Divorce law and procedure. Custody of children. Wills and grants. Deathbed bequests.

(8) STRUCTURE OF NATIONAL and MUNICIPAL GOVERNMENTS **April 30, 1953**

Government institutions. Taxation. Peace overtures. Declarations of War. Conduct of war. Avoidance of unnecessary destruction. Captives and spoils of War. Military service. Exemptions. Incorporation of new Territory.

President Urges Participation in Society's Activities

Widely recognized as an important factor for the common good in the profession, The Decalogue Society of Lawyers needs help to broaden the range of its influence and increase its usefulness. All members are urgently invited to take part in the manifold activities of our bar association.

President Harry A. Iseberg urgently requests that members cooperate by writing to him at Society headquarters, 180 West Washington Street, and indicate their preferences as to committees on which they choose to serve.

Below is a list of the Society's standing committees and their chairmen.

STANDING COMMITTEES

BUDGET AND AUDITING	
Roy I. Levinson	FR 2-1266
CITY LEGISLATION	
Harry G. Fins	FI 6-0047
CIVIC AFFAIRS	
Elmer Gertz	AN 3-3553
CONSTITUTION AND BY-LAWS	
Maxwell N. Andalman	ST 2-6366
THE DECALOGUE JOURNAL	
Benjamin Weintroub, Editor	DE 2-6554
DIRECTORY AND DIARY	
Oscar M. Nudelman	FR 2-1266
ENTERTAINMENT	
Morton Schaeffer	ST 2-1225
ETHICS AND INQUIRY	
Samuel Allen	CE 6-3605
FEDERAL LEGISLATION	
Bernard H. Sokol	ST 2-6603
FORUM	
Maynard I. Wishner	WH 4-4483
FOUNDATION FUND	
Nathan Schwartz	ST 2-8822
HOUSE AND LIBRARY	
Louis J. Nurenberg	FI 6-3573
INSURANCE	
Max Reinstein	RA 6-4820
INTER-BAR ASSOCIATION COUNCIL	
Carl B. Sussman	ST 2-6366
JUDICIARY	
Reuben S. Flacks	DE 2-3340
LABOR LAW	
Joseph M. Jacobs	FR 2-1646
LEGAL AID	
Matilda Fenberg	AN 3-3313
LEGAL EDUCATION	
L. Louis Karton	RA 6-8000 Ex. 759
MEMBERSHIP	
Leonard Handmacher	DE 2-4222
and H. Burton Schatz	FR 2-9848
MEMBERSHIP RETENTION AND CONSERVATION	
Harry D. Cohen	FR 2-4736
MERIT AWARD COMMITTEE	
Oscar M. Nudelman	FR 2-1266
ORGANIZATION AND SOCIAL WELFARE	
Jack E. Dwork	FI 6-4747
PLACEMENT AND EMPLOYMENT	
Michael Levin	AN 3-3186
PLANNING	
Paul G. Annes	CE 6-1770
PUBLIC RELATIONS	
Archie H. Cohen	FR 2-4137
SPEAKERS BUREAU	
Alex M. Golman	CE 6-2900
STATE LEGISLATION	
Hon. Marshall Korshak	RA 6-2038
WIDER SCOPE ACTIVITIES	
Judge George M. Schatz	FR 2-3000
YOUNGER MEMBERS ACTIVITIES	
Samuel D. Golden	FR 2-2511

APPLICATIONS FOR MEMBERSHIP

Leonard Handmacher and H. Burton Schatz, *Co-Chairmen*

APPLICANTS	*SPONSORS*
Harold Bell	Lester Slott & Bernard Neistein
Marvin J. Glink	M. N. Andalman & Alan D. Katz
Eugene W. Gordon	Howard Arvey & Saul A. Epton
M. T. Gruener	I. Archer Levin
Herman A. Kole	Edward Contorer & Maurice Cohn
Gerald Mozinski	Paul G. Annes & Benjamin Weintroub
Gene Howard Rocklin	Benjamin Weintroub & Paul G. Annes
Jay Arthur Schiller, Jr.	Lester Slott & Bernard Neistein
Jules C. Spiegel	Richard Fischer
Leonard M. Steigler	Kernal Freeman & Mort Schaeffer
Marvin D. Michaels	Judge Julius Miner & Carl B. Sussman

ELECTED TO MEMBERSHIP

Arthur S. Freeman	Arden Archie Muchin
Fred Jasmer	Mark Lee Schwartzman
Leonard L. Leon	Gerald S. Specter
Marvin Lustgarten	Cecil W. Weiss

SPEAKERS AVAILABLE

Alex M. Golman, Chairman of The Decalogue Speakers Bureau invites requests from members for speaking engagements for his committee. Members of our Society in need of lecturers for organizations they are affiliated with or other special events and occasions should consult Mr. Golman at 30 No. LaSalle Street or write to Society's office at 180 W. Washington Street.

Congressman A. J. Sabath – Tributes

The passing of our member, Congressman A. J. Sabath, is an irretrievable and a major loss to all Americans. The world over, Congressman Sabath was known as the champion of the underprivileged and the stalwart defender of civil rights. The following are several expressions of appreciation and bereavement from members of our Society received at press time. Other communications, it is expected, will be published in a subsequent issue of our Journal. —EDITOR

CONGRESSMAN SABATH was an important figure in the political history of our country because he was a symbol of what America promises to the world. From a humble beginning, as an ordinary immigrant, his industry and devotion to his people were rewarded with a record in public office as that man who had served the longest continuous term in the history of the House of Representatives. He was perhaps the staunchest advocate of the humanizing of American Government and his New Deal philosophy pre-dates Franklin Delano Roosevelt's Administration.

Congressman Sabath was one of the first to recognize and implement the precept that every large American city is made up of all sorts of men, not alone the rich, but the poor as well, not only the educated but the illiterate, not only the native born but those born abroad. He will always be remembered as a truly representative citizen who achieved greatness.

I am proud to join my fellow members of The Decalogue Society of Lawyers in honoring Congressman A. J. Sabath.

COL. JACOB M. ARVEY
Illinois National Committeeman Democratic Party

AMERICA is poorer for the loss of Congressman Adolph J. Sabath. The underprivileged everywhere have lost a staunch champion. The Jewish community of Chicago and those of us who have dedicated ourselves to the cause of Israel have lost a stalwart spokesman.

I knew Congressman Sabath when he was battling to help to bring about the Jewish State of Israel. I was present in Washington when he called a special meeting of all the Congressmen and Senators from Illinois, and when through his earnest and sincere presentation of the problems was instrumental in securing a resolution putting the Congress on record as supporting the creation of the Jewish State. His indefatigable efforts in helping to secure Grant in Aid Loans for Israel were largely responsible for this most valuable assistance to Israel.

MORRIS S. BROMBERG
Chairman of the Administrative Council of the Zionist Organization of Chicago

IT WAS MY RARE PRIVILEGE to have known Congressman A. J. Sabath long and intimately both as a fellow member of the Covenant Club and an outstanding member of the political party to which I belong. Congressman Sabath has always proved to me an inspiration to cherish and to treasure. One felt in his presence the magnetic force of an exalted individual, a purposeful character dedicated to the good of others, a fellow Jew and an American I was proud to cultivate. His contributions to the welfare of our country are already well known.

JUDGE HENRY L. BURMAN
President, Covenant Club of Illinois

CONGRESSMAN ADOLPH J. SABATH'S unprecedented tenure in office abundantly shows his popularity among his constituents for almost half a century. He was a faithful public servant, ever ready to aid the cause of the most humble citizen, a true representative of people of all races and creeds in the nation's capitol.

ARCHIE H. COHEN
Past President of The Decalogue Society of Lawyers and Past President District Grand Lodge No. 6. B'nai Brith

---

CONGRESSMAN A. J. SABATH epitomized in his person in the many decades of his public service the finest qualities of American citizenship. Himself a scion of poor people he came to the United States as a boy, restless in his purpose to prove worthy of the opportunities for education and achievements the new land afforded him and to other immigrants. Hard work, intelligence and uncompromising devotion to American ideals of liberty and equality brought to public notice his qualities for leadership. Rewarded with public office he became known for nearly two generations as the champion in Congress of the foreign-born and the sponsor of legislation that helped realize that steadfast bulwark of our traditions, the Bill of Rights. A Jew and an immigrant he realized in his deeds the noblest ideals of his adopted country. His memory will inspire others to emulate his accomplishments.

HARRY A. ISEBERG
President Decalogue Society of Lawyers

THE PASSING OF ADOLPH J. SABATH from the American scene also marks the passing of an epoch in American history. An immigrant to these shores at a time when America was still regarded as an asylum for the poor and oppressed of all lands, this penniless lad fashioned out of his life a typical saga of enterprise and success. Typical too, of the period which marked his rise to political fame, was his devotion to helping the foreign-born and needy who had proven less fortunate than himself in the struggle for material possessions. Throughout the forty-six years he served in Congress, he, more perhaps than any other single individual, symbolized the spirit of Liberty, which is inscribed on the Statue of Liberty in words of the poetess Emma Lazarus which sound like a paraphrase of Sabath's own thoughts:

". . . Here at our sea-washed, sunset gates shall stand
A mighty woman with a torch, whose flame
Is the imprisoned lightning, and her name
Mother of Exiles. From her beacon hand
Glows world-wide welcome; her mild eyes command
The air-bridged harbor that twin cities frame.
'Keep, ancient lands, your storied pomp!' cries she
With silent lips. 'Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore,
Send these, the hopeless, tempest-tossed to me,
I lift my lamp beside the golden door.'"

Except for the American Indians, all of us who are blessed with American citizenship are immigrants or the descendants of immigrants. As the eloquent voice in Congress and the strong right arm of the poor, the oppressed, and the foreign-born, Adolph Sabath devoted all his energies to improving the lot of his fellow men, by measures at first popular, then falling into disfavor, to be restored in the 1930's and 1940's, and again to be threatened. Whatever the future course of America, millions of citizens, both the foreign born and the sons and daughters of foreign-born, many of whom have never heard his name, owe a debt of gratitude which can never be repaid to this once penniless immigrant.

BARNET HODES
Former Corporation Counsel City of Chicago

I HAVE KNOWN the Congressman for a great many years. In fact, he was the head of the organization to which I belonged when I first went into politics. It was then known as the Harrison-Dunne-Lewis part of the Democratic Party. The Congressman was in his prime then and was a man of great vigor and ability, always interested in young men and assisting them in their political ambitions. He will be missed greatly by his constituents and his party.

ULYSSES S. SCHWARTZ
Justice Illinois Appellate Court

CHICAGO AND AMERICAN JEWRY lost its greatest representative in the National Government when "A. J." passed away in the shadows of the nation's capitol. As one of his first secretaries during his record-breaking career as a law-maker, I find my solace in the privilege of speaking of him as one who possessed a brilliant mind and a golden heart. First as a member and later as a Chairman of the Immigration Committee in his earlier years in Congress, he was indefatigable in his fight for liberal laws. Countless thousands came to our shores as a result of his enlightened efforts. Their American-born children and grandchildren should now bless his memory for the gifts that are theirs because of Adolph J. Sabath. He was ever attentive, responsible and kind to the multitudes in his district, his constituents, who were foreign-born who learned through him to love and respect America. No man that I know who was so high in public office lived more modestly nor walked more humbly. A most remarkable son he carried on his first trips to Washington the home-made lunches his mother always prepared for him; a brother who carried his family's burdens and levelled his and their life's fortunes correspondingly. He bestowed upon his generation the gifts and the blessings of manifold contributions and God gave him longer time than most to continue his good works.

JUDGE JAY A. SCHILLER

THE YEAR 1952 saw the birth of the McCarran-Walter Immigration Act and the death of Congressman Adolph J. Sabath. The two were interrelated in the way that good and evil still are interrelated.

The McCarran-Walter Act is the flowering of the anti-alien idea—that the immigrant to these shores is something of an evil, at best to be tolerated but also to be restricted and circumscribed. Congressman Sabath fought the McCarran-Walter Act and the philosophy which gave it birth; more, he lived a long and useful life in refutation of such philosophy.

In the life of Sabath we see the immigrant in his true colors—the builder of America and defender of the American spirit. He will be remembered not for what he received from America, but for what he gave to this land of his choice.

For his having been here, we have a better America.

DAVID F. SILVERZWEIG
Past President Decalogue Society of Lawyers,
President, American Jewish Congress,
Chicago Council

Mechanics Liens in Illinois – 1951 Amendment

By LOUIS J. NURENBERG

Effective July 11, 1951, Section I of Chapter 82 of the Illinois Mechancs' Lien Act, Smith-Hurd Statutes Annotated, was amended, the pertinent part of which is as follows:

> "Any person who shall by any contract or contracts, express or implied, or partly express or implied, with the owner of a lot or tract of land or with one whom such owner has authorized or knowingly permitted to contract for the improvement of the same, furnish material, fixtures, apparatus or machinery,—or perform services as an architect, structual engineer, *professional engineer or land surveyor* for any such purpose or furnish or perform labor or services as superintendent, timekeeper, mechanic or laborer or otherwise or furnish materials, fixtures . . . on the order of his agent, architect, structural engineer, or superintendent, shall be known under this Act as a contractor, and shall have a lien upon the whole of such lot or tract of land—."

The change was in the italicized words above, adding professional engineer and land surveyor to those entitled to liens. In brief summary of antecedent statutes, it should be understood that under the Act of 1895 only architects were included in the category of those having liens. In 1913, structural engineers were added, and in 1951 the aforesaid professional engineers and land surveyors joined the procession.

In Illinois the mechanics liens are strictly statutory and must be strictly construed as in derogation of the common law.

Gunther v. O'Brien 369 Ill. 362

People ex rel Bradley v. Circuit Court of Pulaski County 393 Ill. 520

United Cord v. Volland 284 Ill. App. 652

The best court citation of the above rule in regard to the assertion of a lien against real estate is the case of Bennett v. Ascher, 228 Ill. App. 350, decided in 1923, when the Mechanics Lien Act was substantially the same as today, with the exception, of course, of professional engineers and land surveyors. In this case suit was brought by a structural engineer who claimed to be employed by a contractor who was the admitted agent of the defendant builders. The plaintiff attempted to establish that he was entitled to a lien on the basis of the statutory provision permitting one who performs services on order of agent, etc. to have a lien.

The court held that the word "services" as therein stated applied to inferior grades of work and could be implied in cases of structural engineers or architects. It stated:

> "If such a construction were adopted it would necessarily result that when an owner had employed an architect, that architect might hire another architect—or if the owner employed a structural engineer that such engineer, might hire another structural engineer—and the owner thus bound. We do not think that such a result was intended by the legislature."

In this case the court interpreted the word "structural engineer" to mean one who prepared the necessary specifications and detailed drawings for the structural steel work and reinforced concrete in the structure. 228 Ill. App. 350, 352.

The word "architect" is defined in a number of cases and an architect who draws plans for the erection or improvement of a building is entitled to a lien under the Act whether or not the building is erected.

(1916) Nimmons v. Lyons & Healy 197 Ill.

(1930) Crowen v. Meyer 342 Illinois 46

This is the law. Several cases which appear inconsistent, really are not, because the facts in Mallinger v. Shapiro (1927) 329 Ill. 629, required the architect, as a condition precedent, to obtain a loan and he failed to do so. The case of Adler v. World's Pastime Exposition Co. (1888) 126 Ill. 373 did not permit a lien in favor of architects for keeping books, auditing accounts and making settlements with the various contractors engaged in erecting a building, nor for labor as supervising architects in the improvement of grounds and accessories. (See also Section 54 of Stephen Love's fine book on Illinois Mechanic's liens)

The above discussion regarding architects and structural engineers becomes significant when it is considered that there have been no decisions since the 1951 amendment to the Act defining professional engineers and land surveyors. The exact definition of the above terms is essential to prevent unwarranted and unlooked for blots on title and impediments to sale that are not thought of at the time contractual relations are initiated.

The process of defining "land surveyor" is not too difficult, "Words and Phrases" Volume 40, page 888 states:

> "To survey land means to ascertain corners, boundaries, divisions, with distances and directions, and not necessarily to compute areas included within boundaries, Keer v. Fee 179 Iowa 1097. 'Survey' has been held to allow an underground survey as well as a surface inspection. Howes Cave Line & Cement Co. v. Howe's Cave Assn. 34 N. Y. S. 848, 851."

A California court takes judicial notice that a surveyor in the field must ordinarily have with him chainmen and rodmen, and that carrying chain or holding pole or rod . . . is not surveying. Severana v. Ball 93 Cal. App. 56. Surveying is defined as the operation of finding and delineating contour, dimensions, topography etc. State ex rel Landis v. Ward 117 Fla.

585, or as the actual measurement of land, Winter v. United States 30 Fed. Cas. 350.

The definition of "professional engineer," however, opens the door to unlimited trouble. A structural engineer has already been permitted a lien. Does the amendment mean that a structural engineer is not a professional engineer in the eyes of the legislature?

Or let us consider the definition of "professional engineer" in the Encyclopedia Britannica, which states:

> "The engineer's principal work is to discover and conserve natural resources of materials and forces, including the human, and to create means for utilizing these resources with minimal cost and waste and with maximal useful results."

The Encyclopedia Brittanica and the Encyclopedia Americana agree that first there were only military engineering and civil engineering, but now in the age of specialization there exist mechanical, mining, marine, sanitary, chemical, electrical, hydraulic and aeronautical engineering. These are not the only possible types of professional engineers. In Caird Engineering Works v. Seven-Up Mineral Co. 111 Mont. 471 the court stated that the legislature contemplated the services of an engineer as they are usually performed—from their home offices. It should be acknowledged that in this same case the court held that mechanics' lien statutes should receive a liberal construction so that their objects and purposes may be carried out. This construction, as was earlier mentioned, is not followed in Illinois.

The Dictionary of American English, Volume 2 adds a forceful definition of an engineer with this example:

> "Politicians just as slippery as any who engineered the great fraud of Mr. Polk's election."

Until the term "professional engineer" is actually passed upon by the Supreme or Appellate Courts there is grave danger that title to realty may be clouded by persons doing exterminating, public relations work, catering to the woes of psychotic workmen or some other hitherto unthought of occupation. Those coming under the heading of professional engineers may assert liens on the basis of their relations with the owner himself, whereas those claiming liens for services on order of agents, superintendents etc. must rely upon the express or implied authority of such superior agents to hire them under the statute.

However, the services for which the lien is claimed must be only for the purposes enumerated in the statute, such as building, altering, repairing or ornamenting. There can be no lien for printing and stationery furnished or money loaned to a contractor. City of Staunton v. Cole & Taylor 254 Ill. App. 377. Merely moving a building from one lot to another does not give a lien, Stephens v. Holmes 64 Ill. 336.

Moreover the essentially conservative position of the Illinois Courts on the Illinois Mechanics Act affords adequate protection for the landowner against any unusual interpretation of the words "professional engineer" and "land surveyor."

Decalogue Group Insurance Coverage Extended to Relatives of Members

Max A. Reinstein, Chairman of The Decalogue Insurance Committee announces that arrangements have been made with the American Income Assurance Company, 180 W. Adams Street, W. J. Henderson agents, to extend the Decalogue Hospitalization plan and coverage to parents and other relatives of The Decalogue members. Any dependent over the age of 19 and up to 70, in good physical condition, may enroll in a $100.00 a week hospital indemnity plan. The $100.00 a week is paid for life. The new enrollment period (November 5 to December 9) for The Decalogue members has been extended to December 19. For further information and application forms please phone The Decalogue Society of Lawyers office: ANdover 3-6493.

THE LIE DETECTOR IN CIVIL CASES

Member Judge Jacob M. Braude of the Municipal Court and John E. Ried of this city will speak before the Decalogue Forum Committee, "On the Lie Detector in Civil Cases" Friday, December 19, at a luncheon at the Covenant Club, 10 North Dearborn Street.

Both speakers are exceptionally well qualified to discuss this subject. Judge Braude, long interested in civic and legal improvements and reforms will expatiate upon his use of the lie detector not only in criminal but in civil cases as well. Ried, a Chicago attorney, served as a lie-detector examiner at the Chicago Police Scientific Criminal Detection Laboratory for eight years. During his tenure there he examined over 2500 criminal suspects obtaining approximately 1000 felony confessions which included 50 murder confessions. He is now head of his own laboratory in lie detection at 600 S. Michigan Avenue.

Members are urged to attend and invite their friends in the profession. Luncheon optional.

> "There are some men who lift the age they inhabit till all men walk on higher ground in that lifetime."
>
> Maxwell Anderson in *Valley Forge.*

The Right of Privacy

Eick vs. Perk Dog Food Co., et al, recently decided by the Illinois Appellate Court, (374 see app. 293) involved a decision for the first time in Illinois on the question of the "right of privacy." The unanimous opinion of the court sustained this right. What follows are portions of the exhaustive and scholarly opinion, delivered by member Justice Ulysses S. Schwartz on this subject. —EDITOR

The complaint charges that defendants, without the consent of plaintiff, used her photograph in an advertisement promoting the sale of dog food. The advertisement, it is charged, depicted the plaintiff, a blind girl, as the prospective donee of a "Master Eye Dog," although plaintiff was already the owner of such a dog and had no need for another. This, plaintiff charges, caused her to lose the respect and admiration of those who knew her and to suffer humiliation and mental anguish. No special damages are alleged. These allegations state a cause of action for violation of an interest which has become known as the right of privacy. (Numerous cases cited—Ed.) The question of whether or not such a right exists in Illinois has never been passed upon by any court of review in this state.

The right is now recognized by the great preponderance of authority throughout the country. Courts of at least twenty American jurisdictions have explicitly recognized the right either in direct holdings or well considered dicta. Three other states have statutes recognizing the right. (New York, Utah and Virginia—Ed.)

Following the lead of Samuel Warren and Louis D. Brandeis, whose famous article The Right of Privacy, 4 Harv. L. R. 193 (1890) first used the phrase "right of privacy," distinguished writers have supported the recognition of the right. (Authorities cited in the opinion) In American Jurisprudence, Vol. 41, pg. 927, it is stated that the preponderance of authority supports the view that there is a legal "right of privacy," the invasion of which gives a right to a cause of action. This is likewise supported by articles in the American Law Reports, 138 A. L. R. 22, 168 A. L. R. 446, 14 A. L. R. 2d 750, and by 54 Corpus Juris, 816, Right of Privacy (1931). The right is defined and approved in the Restatement of Torts, Sec. 867.

Against this massive weight of authority there is pitted a small, largely inconclusive group of opinions written for the most part before the bulk of the cases upholding the right of privacy were decided. Only one of the cases cited as denying the existence of the right of privacy stands today as an unqualified precedent refusing to recognize the right. *Henry* vs. *Cherry & Webb*, 30 R. I. 13 (1909). The others have all been overruled or limited. (A number of other cases cited and commented upon.)

. . . Thus, the Rhode Island case of *Henry* vs. *Cherry & Webb, supra,* stands today as the only unrestricted holding flatly denying all parts of recovery for invasion of privacy. To our knowledge, no case decided during the last fifteen years has denied the existence of the right. Nizer in his article on the Right of Privacy, says that the recent unpretentious recognition by the courts of the right indicates more than anything else that it has become firmly established in our law.

Basically, recognition of the right to privacy means that the law will take cognizance of an injury, even though no right of property or contract may be involved and even though the damages resulting are exclusively those of mental anguish. A person may not make an unauthorized appropriation of the personality of another, especially of his name or likeness, without being liable to him for mental distress as well as the actual pecuniary damages which the appropriation causes. The right of privacy, is, of course, limited in cases of express or implied consent and in areas of legitimate public interest. But no such limitations are relevant in the instant case. Plaintiff was not a public figure, she did not consent to have the picture used, and there was no legitimate news interest in her likeness.

. . . Objections to the recognition of the right of privacy stemming from the fact that damages for violation of the right are based on mental suffering are not well founded. In fact, in a discussion of the right of privacy published before the recent charges in Restatement of

Torts, a leading authority and writer on torts said: "It seems obvious that (the right) is only a phase of that larger problem of the protection of plaintiff's peace of mind against unreasonable disturbances; and if that 'new tort' of the intentional infliction of mental suffering receives general recognition, the great majority of the privacy cases may be expected to be absorbed into it." Prosser on Torts, Sec. 107, pp. 1053-4 (1941). Far from being a brake on the development of the right of privacy, the law with respect to actions for the infliction of mental suffering threatens to surpass and absorb the privacy cases in its own expansion.

But even if we grant defendants' point that the right of privacy has no foundation in ancient common law, it does not follow that we should deny plaintiff's right to recovery. To deny relief because of lack of precedent is to freeze the common law as of a particular date. In the comparative security and warmth of an era of peace and prosperity, the tendency is to cling to form and to cast a jaundiced eye on anything requiring adaption. With changing times rigidity can often mean injustice. Mr. Justice Holmes stated that sometimes courts are called upon to grant redress in a case without precedent for injuries resulting from conduct which universal opinion in a state of civilized society would unhesitatingly condemn as indecent and outrageous. He felt that in such a case the court should accept the view that the common law has a capacity for growth and expansion and the ability to adapt itself to the principle that it can grant relief. Mr. Justice Cardozo expressed the same idea in *The Growth of the Law*, pp. 19-20, and used language even more apposite to the instant case in *The Nature of the Judicial Process*, p. 142. Like Holmes, he felt that where the controversy demands redress, and the law has left the situation uncovered by any pre-existing rule, there is nothing for the court to do except to declare what fair and reasonable men, mindful of the habits of life of the community, and of the standards of justice and fair dealing prevalent among them, ought, in such circumstances, to do.

Reviewing courts both in this country and in England have time and again extended relief in new cases where there was no substantial precedent to support the action. (Many cases cited in opinion—Ed.)

The complaint states a good cause of action for violation of plaintiff's right of privacy by defendants' unauthorized use of her picture for advertising purposes.

ED. NOTE: *The second count of the complaint was based on libel. Action of the lower court striking this count was sustained by the reviewing court.*

LAUDS DECALOGUE ARTICLE

The September issue of The Decalogue Journal was officially complimented by the Corporation Counsel's office of the City of Chicago. In a memorandum issued to his entire staff, J. J. Mortimer, Corporation Counsel, stated that; "an authoritative article *Direct Appeals in Cases involving the validity of a statute, a construction of the Constitution, or the validity of a Municipal Ordinance*, prepared by assistant corporation counsel Arthur Magid appears in the September, 1952 issue of The Decalogue Journal. Copies of the Journal are available in our library.

The same issue of the Journal contains an interesting article with regard to the new president of The Decalogue Society, Harry A. Iseberg of our staff."

SEEKS RELATIVE

Past president Harry D. Cohen is in receipt of a communication from Miss Barbara Hurst, 132 E. 72nd Street, New York 21, New York, who is trying to enlist the help of Chicago lawyers of Jewish faith in the following matter.

When in Europe recently, relates Miss Hurst, she made the acquaintance of a young man, one Lova Oesterreicher, 6 Avenue Fremient, Paris 16, France, who told her that when a child his parents were deported from Marseilles, France to a concentration camp in Germany and that he had never again heard either from them or from his sister who was forced to accompany them.

The young man remembered that his mother, whose maiden name was "Libkin" and who was born in Yalta, Russia, had told him that she has a relative in Chicago, an attorney whose name is "Cohen." The son, who seeks no financial help, will deeply appreciate information that will help him locate this relative. Members and others in the legal profession who may be of assistance please communicate either with the son in France, or with Miss Hurst in New York.

BOOK REVIEWS

The Impact of the Labor Union: Eight Economic Theorists Evaluate the Labor Movement. Edited by David McCord Wright. Harcourt, Brace. ix + 405 pp., $4.00.

Reviewed by LEON M. DESPRES

This extraordinary book presents the views of eight conservative American theoretical economists on the existence and functions of labor unions. None of the economists was a specialist in labor economics. All of them think in terms of the economy as a whole. Each of them prepared a provocative discussion and all of them took part in discussing each paper presented. The book is actually an edited report of the Institute on the Structure of the Labor Market held at the American University in Washington, D. C. just before the outbreak of the Korean War.

The views expressed range from the self-assured theoretical views of Milton Friedman, of the University of Chicago, to the middle-of-the-road wisdom of John Maurice Clark, professor at Columbia University, which seems mellow next to Friedman's extreme position. In, between, are the other economists leaning more toward Friedman than Clark.

Yearning for the days when philosophers will be kings, Friedman looks forward to the reduction of all labor unions to plant size, and to the elimination of all union functions except local welfare activities. In the long run unions don't change wages, says Friedman; so why, he infers, should they discommode competition in the short run? "I have no hope" he writes, "that unions can be persuaded to commit suicide deliberately. My suggestion rests on the hope that the community at large can be persuaded of the virtues of competition; and the belief that, if they are so persuaded, there is no serious technical obstacle to the attainment of effective competition." Translated into social and political terms, such "persuasion of the community at large" would probably mean a Taft-Hartley-Friedman law to "strengthen" the present Taft-Hartley law.

Clark, on the other hand, tempers the views of his colleagues. He modestly puts aside the mantle of omniscience. "The views of economists deserve weight," he says, "but are not the final word." Unions are not all bad, he suggests. In addition to bargaining for wages, "unions are vitally needed for other purposes, connected with the protection of the human rights of workers on the job."

Moreover, Clark shows the rational inconsistence in business, which criticizes unions for inflationary wage demands but rejects union questioning of business about profits and prices. Clark's words of wisdom on this subject ought to command nationwide attention:

"As long as business succeeds in protecting, by price increases if necessary, a level of profits that labor regards as grossly swollen, strong unions may be expected to take an attitude like the following: 'We don't think you have any proper business to raise your prices to compensate for this wage increase we're demanding. If you do it, we'll blame you. But if we know you're going to do it, we still want the increase in wages.' If the dispute over profits were cleared up, possibly the wage demands would merely be rationalized differently, but they would be harder to justify.

"It seems likely that both unions and employers have gone at this question wrong end to: unions prejudging arguable questions bearing on the justification of profits, and employers insisting that prices are none of labor's business, thus by-passing the relevant fact that labor's attitude on wages is affected, among other things, by its ideas and attitudes about profits. It seems that a fresh start is needed on this issue, with a more open-minded attitude on both sides."

What is the proper role of economists in fixing national policy toward labor unions? Shall the United States take the views of Professor Friedman and some of his colleagues in this book that with their scientific wisdom and observation the trained theoretical economists should become the philosopher-kings of our economy? Or shall we take Professor Clark's view:

"The proper role of economists in this matter is probably, in the main, the furnishing of the best possible data, rather than attempts at authoritative pronouncements of what is economically practicable or sound. Economists have an unfortunate record of proving that things are impossible or unsound which afterward come to pass, without all the disastrous consequences that have been foretold."

A reading of the book may furnish an answer; but in any event a reading of the book will give an unusual perception of the prevailing views on labor unions held by America's leading theoretical free enterprise economists.

So You Want to Be a Lawyer, by Prof. Kenneth R. Redden. The Bobbs-Merrill Co. 125pp. $2.50.

Reviewed by PAUL G. ANNES

What to undertake as one's life work is obviously a most important question to the young and their elders. Choices are frequently made quite without a knowledge of the nature of the pursuit being considered or the person's qualifications for it—and there is much more besides to be taken into account. Prof. Redden, with a wide background as a lawyer, law teacher, personnel worker in industry and, finally, as Placement Director of the University

of Virginia Law School, has written a guidance manual for those thinking of law as their profession. He has considered two principal questions: "What it takes to be a lawyer" and "What are the oportunities in the Law?" These questions are broken down into a number of sub-problems, which are discussed in a leisurely, matter-of-fact way, without pretension or pontification.

The major part of the book is intended to give the reader an idea of what a lawyer's work is, the desirable personal traits and education of a lawyer, the legal requirements for admission to the Bar of the various States, and even some reference, though of practically no value, to bias as a bar to employment as a lawyer. The concluding portion presents, for the most part, the statistical data about lawyers, their number, their distribution geographically, their present income, and future prospects.

Professor Redden has made available a useful source of much information, both for the prospective law student and for his parents. Reading it would help many a young man to form a better knowledge of what he ought to know about law and lawyers before he begins his studies. The parents, too, would learn some things and unlearn others, and thus be in a better position to make sound decisions for their children.

But no book can give sure answers in each case, nor even in any case; it can only help. There are other aids, one particularly, which seems worth suggesting. It were well for the student and those responsible for him to discuss with a number of practicing lawyers they might know or be introduced to, many of the points treated by the book—*after* reading it. The combination should be of considerable value.

Plagiarism and Originality, by Alexander Lindey. Harper & Brothers. 366pp. $5.00.

Reviewed by ELMER GERTZ

Lawyers may read this book for the fund of information in a field unfamiliar to most of us. Laymen, too, may read the book for its erudition, but even more for its fun and frolicsome manner. Its author, Alexander Lindey, has written other popular legal books in collaboration with the celebrated Morris L. Ernst on defamation of character and censorship, and he has written two much used treatises on separation agreements and motion picture contracts. It is thus seen that he lives on the dramatic fringes of the law and his latest work has the verve that one would expect.

This book deals with the stealing of literary, musical and artistic property. It tries to answer the question as to where legitimate research and scholarly borrowing end and theft begins. Most of the volume is written in a non-technical manner, not in the least like a text, but 75 or more pages at the end are devoted to notes and legal material (including the citation of authorities), an extensive bibliography and an index. There are chapters on originality, similarity, parallel-hunting, literary property and copyright, the byways, ethics and psychology of plagiarism, and much historical and anecdotal material from the past and present.

Mr. Lindey concludes with some wise and witty observations, a few of which should be quoted even in a brief review of his work:

"1. Historically viewed, all artistic creativity is related and interdependent, continuous and cumulative. Every work, past and present, is but a link in the chain.

"2. All artists borrow, the great nobly, the small without distinction. It's not what a man borrows that counts, or when or where or why, but what he does with it.

"3. The plagiarism which, in the case of a genius (especially a dead genius) is hailed as an exercise of royal prerogative, may, in the case of a humble practitioner, be condemned as larceny.". . .

"6. A certain amount of stealing is doubtless going on all the time. The preponderance of borrowing, however, is legitimate. There is too much unwarranted plagiarism-crying.

"7. Neither exemplary conduct nor high position is a guaranty of exemption from attack. . . .

"8. Plagiarism claimants are, as a class, woefully ignorant of the elementary canons of infringement.". . .

"10. The dexterity which plaintiffs display in conjuring up parallels where none exist is matched by the ingenuity of defenders in fabricating defenses. . . ."

"12. Most of the infringement cases appear to have been justly decided.

"13. The extent of the plagiarism nuisance is not to be measured by the number of cases that run their course in the courts. The claims that are settled or dropped before or after proceedings are started outnumber by far those memorialized in the law books.

"14. Precedents can be found to support either side of almost every legal question. No court decision is conclusively determinative of a later case, no definition is immutable, no judge-uttered rule sacrosanct."

I cannot resist the temptation of referring to a section towards the end of the book, labelled "How to Avoid Trouble"—not trouble in general, but trouble with respect to plagiarism suits. Of course, there is no complete immunity from claims—unless one chooses to be completely mute, and to forego all forms of creativeness. Even God created man in His own image—a divine form of plagiarism. But here in this readable book is much sound advice and lore on a subject that has plagued many people throughout the centuries. Few can say as John Bunyan said of his *Pilgrim's Progress,* "the whole and every whit is mine." For all others this book is recommended.

Lawyer's LIBRARY

The *Editor* earnestly suggests close examination of the titles listed below.

New Books

Angerstein, Thomas C. *Illinois workmen's compensation.* Rev. ed. Chicago, Burdette Smith Co., 1952. 3v. $45.00.

Appleman, John A., ed. *Successful jury trials.* Indianapolis, Bobbs-Merrill, 1952. $15.00.

Auerbach, Charles. *The Talmud: a gateway to the common law,* Cleveland, Western Reserve Univ. Press, 1952. 49 p. $1.00. (Paper)

Bailey, S. K. & Samuel, Howard D. *Congress at work.* New York, Holt, 1952. 512p. $5.00.

Berger, Monroe. *Equality by statute.* New York, Columbia Univ. Press, 1952. 238p. $3.25.

Bryson, Lyman & others, eds. *Foundations of world organization: a political and cultural appraisal.* New York, Harper, 1952. 498 p. $4.00.

Busch, Francis X. *Prisoners at the bar.* Indianapolis, Bobbs-Merrill, 1952. 288 p. $3.50. (Notable American Trials series).

Cabill, Fred V., Jr. *Judicial legislation; a study in American legal theory.* New York, Ronald Press, 1952. 176p. $4.00.

Chambers, Whittaker. *Witness.* New York, Random House, 1952. 808p. $5.00.

Cope, A. H. & Krinsky, Fred. *Franklin D. Roosevelt and the Supreme Court.* New York, Heath, 1952. 109p. $1.00. (Problems in American Civilization, Amherst College)

Fins, Harry G. *Appeals and writs of error in Illinois.* 4th ed. Chicago, 38 p. Apply to the Author.

Gellhorn, Walter, ed. *The states and subversion.* Ithaca, N. Y., Cornell Univ. Press, 1952. 463p. $5.00.

Kellems, Vivien. *Toil, taxes and trouble.* New York, Dutton, 1952. 159p. $2.50.

Kimmel, Lewis H. *Share ownership in the United States.* Washington, D. C., Brookings Institution, 1952. 140 p. $1.50. (Paper)

Kohler, E. L. *A dictionary for accountants.* New York, Prentice-Hall, 1952. 500 p. $7.50.

Koos, Earl L. *The family and the law.* 2d ed. New York, National Legal Aid Assn., 1952. 29 p. $0.50. (Report of study made for the Survey of the Legal Profession).

Lindey, Alexander. *Plagiarism and originality.* New York, Harper, 1952. 366p. $5.00.

Moehlman, Conrad H. *The wall of separation between church and state.* Boston, Beacon Press, 1951. 239 p. $3.00.

Philbrick, F. A. *Language and the law.* College ed. New York, Macmillan, 1951. 264p. $3.20.

Plummer, Alfred. *International combines in modern industry.* 3d ed. New York, Pitman Publ. Corp., 1952. 309p. $6.00.

MORE BOOKS IN OUR LIBRARY

Louis J. Nurenberg, Chairman of The Decalogue Library Committee, advises that the following volumes are recent additions in our library at 180 West Washington Street.

GOLDSTEIN, IRVING, and
SHABAT, L. WILLARD, M. D.
Medical Trial Technique

GOLDSTEIN, IRVING
Trial Technique

ROLLISON, WILLIAM D.
Illinois Estate Planning and Wills

APPLEMAN, JOHN ALAN
Successful Jury Trials

NELSON, WILLIAM T.
Divorce (3 volumes)

FLETCHER, WILLIAM M.
Corporation Forms (5 volumes)

NICHOLS, CLARK A.
Annotated Forms, (1 volume)

HELP LAW SCHOOL GRADUATES

Michael Levin, Chairman of the Placement and Employment Committee of The Decalogue Society of Lawyers is in receipt of requests for employment from members, recent Law School graduates. If there is an opening in your own law office or if you know of one elsewhere, please consult Michael Levin, 7 S. Dearborn St., Telephone, ANdover 3-3186.

DECALOGUE MEMBERS REELECTED

The following members of our Society were reelected November 4, 1952 as Judges of the Municipal Court, Cook County.

Judges Jacob M. Braude, Joseph J. Drucker, and Norman N. Eiger.

Member, Congressman Sidney R. Yates was reelected for a third term from the 9th Congressional District, Chicago, Illinois.

Member Benjamin Nelson was elected to the Illinois House of Representatives from the 19th Senatorial District.

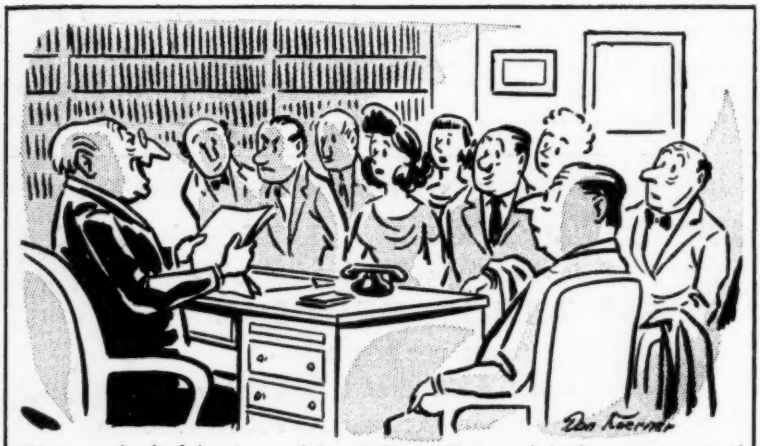
Return Postage Guaranteed

THE DECALOGUE JOURNAL

A Publication of The Decalogue Society of Lawyers

180 WEST WASHINGTON STREET
CHICAGO 2, ILLINOIS

Sec. 34.66 P.L.&R.
U. S. Postage
PAID
Permit No. 4708
Chicago, Ill.



"Your uncle died leaving a debt of fifty dollars, and he'd appreciate it if you all chip in and pay it."

Courtesy, Case & Comment and the artist, Don Koerner